

13 August 2003

House of Representatives Standing Committee
on Family and Community Affairs

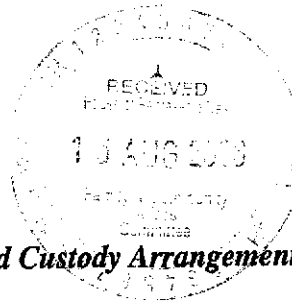
Submission No: **1480**

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Secretary:

The Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600

Dear Sir/Madam,



Re: Inquiry into Child Custody Arrangements in the Event of Family Separation

I would like to present the following submission for your consideration.

According to the Australian Bureau of Statistics report¹, in April 1997 there were 978,000 Australian children living with one natural parent and whose other natural parent lived elsewhere. Among them, 88 percent were living with their natural mother in one-parent families (68%) or in step or blended families (20%). In number terms, 665,040 children were living with their natural mother in 1997. This indicates that children are more likely to be allowed to stay with their mother than with their father on separation. The ABS report stated further that 96 percent of 0-4 year olds, 89 percent of 5-11 year olds, 82 percent of 12-17 year olds were more likely to be living with their mother. In boys 12 to 17, natural fathers had a higher custody rate (21%) compared with girls of the same age (15%). But the vast majority of boys, even in 12-17 year olds (79%) were more likely to be living with their natural mother when families split up.

Looking at the frequency of visits made in 1997 by parents not having custody, only 42 percent of all visits were daily to fortnightly¹. Again this shows the infrequency of contact natural parents, in most cases natural fathers, have with their children on separation. I believe in many cases, the natural father's visitation right is made difficult by the mother who is given the sole custody of the children. This is exacerbated by the attitude and the intrinsic philosophy in which the Australian Family Courts: that the mother is the biological custodian of the offspring and it is in their best interest that the mother be the custodian in the event of family separation.

This indicates clearly that in Australia, as in most western countries, separated children have substantially less contact with their natural fathers in current custody arrangements. Why is the custody of children so biased in favour of the mother? What are the consequences for the children with regard to their physical, mental and social health and welfare? In the past thirty years or so in Australian society, the traditional mother's role has changed. More and more fathers are engaged in child care. It is a shared role including all tasks, from changing nappies to taking a sick child to a doctor. Awarding sole custody to the mother in the event of family separation is no

longer a viable solution. Shared custody should become the norm to accommodate changing times. Children are evolving human beings. A higher value should be placed on their spending equal time with both parents post separation. This is in their best interest. Meyer Elkin², a distinguished statesman in the reconciliation courts' movement in the USA, stated strongly that joint custody is in the best interest of the family. Australian Family Courts appear to take a dim view of this and continue to practice that children are better living with their mothers. This has become the cornerstone of their custody statutes, perpetuating injustice for fathers as well for children. It needs to be accepted that children spend equal time with each parent in the event of family separation.

Research reveals clearly that living in single-parent homes (in most cases with the mother) is deleterious for the post-divorce behavioural and emotional adjustment of children. Amato³ and Bauserman⁴ both conducted extensive meta-analyses of research evidence into child adjustment in joint-custody versus sole-custody arrangements. Both concluded that children in joint custody are better adjusted across multiple types of measures, than children in sole custody.

Bauserman noted:

This difference is found with both joint legal and joint physical custody and appears robust, remaining significant even when testing various categorical and continuous qualities of the research studies as moderators'.

Also, children's school performance is found to be strongly related to their joint custody compared with the sole parental custody⁵.

There is a false perception in many quarters that joint custody arrangements are unworkable and sole custody solves conflicts. Green⁶ argues that, while the legal system operates on a sole-parent concept, there is no evidence to show that joint custody arrangements are not beneficial to the children if custodial decisions are based on time-sharing arrangements. He also points out that the incidence of a child siding with one parent against the other is greatly reduced in joint custody. Bender⁷, reviewing the literature on custody and divorce to provide support for joint custody of children in divorce cases, states:

Results suggest that non custodial parents are often intentionally victimized through visitation denial, and children are hurt when the relationship with either parent is broken in that matter. Children also adjust much better to divorce in joint custody compared to sole custody situations, and their attachment bonds to both parents should be protected by courts (Bender, 1994, page 115)

I entreat you to consider this in the context of family separation in culturally and linguistically diverse groups in Australia. Statistics are not readily available regarding separation, divorce and custodial arrangements in these groups, particularly in Muslim families in Australia. Concerns have been expressed by authors like Abela and Borg⁸ regarding recognition of culture in law and practice with particular reference to the Family Law Court of Australia. I write as a Muslim father who has recently suffered family separation and has come to know other Muslim fathers in a similar situation. These fathers come from moderate Muslim countries where gender equality and the

practice of democratic values are respected and adhered to. We share the following concerns:

1. The community negatively stereotypes all Muslim men as dominating their wives. This notion is exacerbated in the current political climate. Media entrench this ignorance by spreading such misconceptions.
2. Separated wives take advantage of these misconceptions and paint a picture of cruel and domineering husbands. Many so-called progressive women in society are often snared by these misconceptions and extend their support to these women.
3. In most Muslim countries, children are in joint parental custody in the event of family separation. Property is shared according to the *Islamic Shariat Law*, although separated fathers are generally awarded the bulk of the property in order to support the family. In Australia, where most mothers are awarded custody of the children when separation occurs, separated Muslim fathers find that they are no longer in a position to provide and care for their children. It is difficult for them to come to terms with this altered state. Separated Muslim women take advantage of this law and obtain custody of their children, but then they withdraw from their community and live away from their culture, fearing that they will not be accepted because of the family separation. Consequently the children are deprived of the culture and values of their community. This is likely to affect them emotionally and mentally.
4. By following the English Common Law principles, the Family Law Courts in Australia are not being sensitive enough to the cultural and religious values of Muslim fathers in family separation. Most Muslim fathers are becoming disillusioned with the court system. This not only affects their lives, it affects their ability to care for their children which is likely to affect the welfare of the children themselves. In these circumstances joint custody will definitely improve the welfare of the children even in Muslim families.

Therefore, I would like to submit the following suggestions in relation to child custody arrangements in the event of family separation.

1. Where both parents do not agree, all families in the event of family separation will be required by law to engage in **counselling/mediation** by a qualified agency while *other conditions remain constant*.
2. Where both parents do not agree, during the first 12 months of family separation, both parents will be required by law to **share time equally** with their children while *other conditions remain constant*.
3. Where both parents do not agree, for the duration of separation/ divorce from their partner, both parents will be required by law to **share time equally** with their children till they reach 18 years of age, while *other conditions remain constant*.

4. The Family Courts of Australia must require by law that make all judges dealing with family separation receive appropriate training in the cultural issues of the various ethnic populations of Australia.

Yours faithfully,

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References:

1. Australian Bureau of Statistics (ABS), 2000, *Australian Social Trends 1999, family – living arrangements; caring for children after parents*, Canberra.
2. Elkin, M., 1991, *Joint custody: in the best interest of the family court*, in Jay Folberg (edited), *Joint Custody & Shared Parenting*, 2nd edition, Guilford Press, New York, 11-15.
3. Amato, P., R., & Gilbreth, J., G., 1999, *Nonresident fathers and children's well-being: a meta-analysis*, *Journal of Marriage and the Family*, 61, 557-573.
4. Bauserman, R., 2002, *Child adjustment in joint-custody versus sole-custody arrangements: a meta-analytic review*, *Journal of Family Psychology*, 16 (1), 91-102, American Psychological Association.
5. Furr, L., A., 1998, *Fathers' characteristics and their children's scores on college entrance exams: a comparison of intact and divorced families*, *Adolescence*, 33 (131), 533-542.
6. Green, D., 1983, *Joint custody and the emerging two-parent family*, *Conciliation Courts Review*, 21 (1), 65-75.
7. Bender, W., 1994, *Joint custody: the option of choice*, *Journal of Divorce & Remarriage*, 21 (3-4), 115-131.
8. Abela, C., L., & Borg, V., G., 1998, *Ethnic diversity and children's rights: recognition of culture in law and practice with particular reference to the Family Law Court of Australia*, the Third National Conference of Family Law Court of Australia. Hotel Sofitel, Melbourne, 20-24 October, 1-13 (<http://www.familycourt.gov.au/papers/html/borg.html>).